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TAGS: [EINV](#) [ETRD](#) [EFIN](#) [ECON](#) [USTR](#) [SF](#)
SUBJECT: SOUTH AFRICA: DRAFT BEE CODE 700: RESIDUAL
CONTRIBUTION ELEMENT

REF: (A) 05 PRETORIA 4854
(B) 05 PRETORIA 4855
(C) 05 PRETORIA 4856
(D) 06 PRETORIA 337
(E) 06 PRETORIA 575
(F) 06 PRETORIA 646
(G) 06 PRETORIA 700
(H) 06 PRETORIA 879

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11. (U) Summary. The South African Department of Trade and Industry (DTI) released for public comment drafts of Broad-based Black Economic Empowerment (BEE) Codes of Good Practice belonging to the second and final phase on December 20, 2005. The Minister of Trade and Industry plans to promulgate both the first (which have been finalized) and the second phases of the BEE Codes of Good Practice before the end of 2006. Included in the second phase is Code 700. This code accounts for 10% of the BEE scorecard and sets forth the scoring criteria for firms striving to comply with BEE objectives as they relate to "residual contributions." In each instance, the actual number of points awarded is calculated by multiplying the fraction of a compliance target (Code 700 has two) achieved by the number of possible points allotted for each target. In a recent meeting of their BEE Committee, members of the local American Chamber of Commerce voiced a number of concerns about this draft code. Comments on all BEE Codes of Good Practice belonging to the second phase must be submitted to DTI by March 31, 2006. End Summary.

12. (U) On December 20, 2005, the South African Department of Trade and Industry (DTI) released for public comment drafts of BEE Codes of Good Practice belonging to the second and final phase. Comments on these draft codes must be submitted to DTI by March 31, 2006. While the BEE Codes of Good Practice belonging to the first phase have been finalized (Refs A, B, and C), the Minister of Trade and Industry will not promulgate them until the codes belonging to the second phase have also been finalized. DTI wants this to occur before the end of 12006.

13. (U) Codes belonging to the second phase deal with employment equity (Code 300), skills development (Code 400), preferential procurement (Code 500), enterprise development (Code 600), residual contributions (Code 700), and small and medium sized enterprises (Codes 1000 - 1700). Also included in the second phase are subsections to Codes 000 (the BEE Framework for Measurement) and 100 (BEE Equity). The two subsections for Code 000 deal with misrepresenting BEE status (Statement 001) as well as and verification issues relating to complex structures (Statement 002). The four subsections for Code 100 deal with guidelines for the recognition of BEE ownership by BEE targeted warehouse funds (Statement 102), multinational companies (Statement 103), public entities and organs of the state (Statement 104), and companies limited by guarantee and Section 21 (i.e. nonprofit) companies (Statement 105). All may be sourced from DTI's website: www.thedti.gov.za.

14. (U) This cable focuses on draft Code 700, which sets forth the scoring criteria for firms striving to comply with BEE objectives as they relate to "residual contributions." The idea behind residual contributions is to encourage business to fund community development programs that furnish greater access for black people to the economy. Residual contributions must benefit black people, particularly women, youth, and people with disabilities, and people in rural communities. Reftels report on the other codes.

PRETORIA 00001021 002 OF 003

CODE 700

15. (U) Draft Code 700 establishes two compliance targets for "residual contributions" along with one bonus target. Total points for achieving the two compliance targets under draft Code 700 account for 10% of the BEE scorecard. In each instance, the actual number of points awarded is calculated by multiplying the fraction of a compliance target achieved by the number of possible points allotted for each target. Excess scoring for exceeding any Code 700 targets is not possible. However, firms may score a bonus point. For a complete understanding as to how this portion of the generic scorecard is factored into the rest of the scorecard, please refer to Ref A.

16. (U) Under draft Code 700, a firm has two options to comply. Under Option I, a firm can score five points if it spends 1.5% of its net profit after tax on a "corporate social investment" (as defined in Paragraph 13). All "corporate social investment" is considered "non recoverable" (as defined in Paragraph 11). A firm can score another five points if it contributes 1.5% of its net profit after tax in the form of an "industry specific contribution" (as defined in Paragraph 14). Draft Code 700 does not state if "industry specific contributions" can be "recoverable" (as defined in Paragraph 12) or must be "non recoverable" (as defined in Paragraph 11). Under Option II, a firm may score all 10 points if it spends 3.0% of its net profit after tax on a "corporate social investment." Under either option, a firm may score a bonus point if its contributions benefit black people living in rural communities in some way. Firms would be measured annually and not be allowed to carry forward a bonus point from one year to the next. In addition, firms may not mix Options I and Option II, e.g., score 7.5 points via "corporate social investment" and 2.5 points by making "industry specific contributions."

¶7. (U) "Residual contributions" that help black persons to generate personal income can be recognized at a multiple of 1.5. Any non-monetary contributions must be quantified in terms of cost, e.g., the cost of staff time spent. Travel time is specifically excluded from the calculation. Firms would only be allowed to claim their contributions under either Code 600 or Code 700, but not both.

¶8. (U) The following table lists criteria, points, and targets for deriving a score for both options under draft Code 700:

Criteria -----	Points -----	Target ----- % of profit
Option 1 -----		
Corporate Social Investment	5	1.5%
Industry specific Contributions	5	1.5%
Bonus point	1	Benefit to rural person(s)
Option 2 -----		
Corporate Social Investment	10	3.0%
Industry specific Contributions	0	0%
Bonus point	1	Benefit to rural person(s)

CONCERNS

PRETORIA 00001021 003 OF 003

¶9. (SBU) On February 8, members of the BEE Committee of the local American Chamber of Commerce met to discuss draft Code 700. Some committee members were concerned that they might have to discontinue community programs that do not qualify under draft Code 700. One member wanted greater clarity about the recognition of HIV/AIDS programs, housing schemes, and scholarship programs if such programs were targeted at a firm's own black employees. Another member noted that some existing donations to environmental organizations and programs clearly benefited the broader nation, but might not qualify as benefiting mostly blacks. Members pointed out that draft Code 700 did not state the number of people from rural communities that had to benefit from "residual contributions" to earn a bonus point. Other members questioned the reasoning behind the use of "profit after tax" to calculate a firm's contribution, since it might encourage corporations to structure themselves to avoid taking a local profit. Moreover, using "profit after tax" seemed to be inconsistent with the approach taken in other draft codes, which base calculations on earnings before interest, taxes, depreciation, and amortization (EBITDA).

Pertinent Definitions

¶10. (U) Code 000 defines "black" as black, coloured, and Indian South Africa citizens (or those who could have applied for South African citizenship, if permitted) who suffered or whose descendants suffered discrimination under the apartheid regime.

¶11. (U) A "non-recoverable contribution" will include

grants, donations, discounts and other similar quantifiable benefits which are not recoverable by a firm.

¶12. (U) A "recoverable contribution" includes investments, loans, guarantees, or any monetary contribution that has to be repaid or returned to the firm.

¶13. (U) "Corporate social investment" refers to a firm's contributions to society and community that are extraneous to its regular business activities. It would include development programs, health and HIV/AIDS programs, educational programs, training, environmental programs, development of arts and culture, and sport development programs. These programs must benefit black people and in particular, women, the youth, people with disabilities and people in rural communities.

¶14. (U) "Industry specific contribution" is defined as contributions unique to the industry in which the firm operates. A firm may use the Standard Industrial Classification Coding System from Statistics South Africa to group themselves into industries.